

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SAM KHOLI ENTERPRISES, INC.	§	
Plaintiff/Counter-Defendant	§	
v.	§	
	§	
TOM R. THOMPSON	§	Civil Action No. W-08-CA-105
DBA	§	
THOMPSON TRUCKING,	§	
Defendant/Counter-Plaintiff	§	
v.	§	
	§	
SAM KHOLI	§	
Third-Party Defendant	§	

**TOM R. THOMPSON D/B/A THOMPSON TRUCKING'S
APPLICATION FOR POST-JUDGMENT TURNOVER RELIEF**

TO THE HONORABLE WALTER S. SMITH, JR., UNITED STATES DISTRICT JUDGE:

Pursuant to Federal Rule of Civil Procedure 69 and Texas Civil Practice and Remedies Code §31.002, Tom R. Thompson d/b/a Thompson Trucking ("Mr. Thompson") hereby makes application for post-judgment turnover relief. In support of his Application, Mr. Thompson would show:

I. First Request for Turnover Relief

1. This Court signed its Amended Judgment on October 23, 2009 [Document 99], awarding Defendant/Counter-Plaintiff, Tom R. Thompson d/b/a Thompson Trucking a joint and several judgment against Sam Kholi Enterprises, Inc., and Sam Kholi in the amount of \$2,316,670.00, bearing post-judgment interest at the rate of .48% until satisfied, awarding attorneys' fees in the amount of \$30,569.08, and pre-judgment interest in the amount of \$132,189.00.

2. On December 21, 2010, Judgment-debtor Sam Kholi Enterprises, Inc. filed in the Superior Court of the State of California, County of San Diego – Central Division, a Complaint styled Case No. 37-2010-00106420-CU-FR-CTL, *Sam Kholi Enterprises, Inc.*, a California Corporation, v. *Tom R. Thompson, individually and dba Thompson Trucking; Jones Motor Company, Inc.*, a Pennsylvania corporation qualified to transact intrastate business in the State of California; *Jones Motor Group, Inc.*, a subsidiary of Jones Motor Company, Inc.; *Jones Express, Inc.*, a subsidiary of Jones Motor Company, Inc., and *Does 1 through 50, inclusive* (hereinafter the “California Action”). A true and correct copy of the California Action is attached hereto as Exhibit “A”. The California Action filed by Judgment-debtor Sam Kholi Enterprises, Inc., is virtually identical to the prior action filed and litigated to verdict in this Court under this Cause Number.

3. Mr. Thompson filed a Notice of Removal of Action, removing the California Action to The United States District Court for the Southern District of California under Cause Number 3:11-CV-00177-W-POR on January 27, 2011. A true and correct copy of Mr. Thompson’s Notice of Removal of Action can be accessed through the PACER System, Cause Number 3-11-CV-0177-W-JMA, Document 1.

4. Defendants Jones Express, Inc., Jones Motor Group, Inc., and Jones Motor Company, Inc., (hereinafter “Jones Defendants”) filed a Cross-Complaint against Mr. Thompson, asserting equitable indemnity, contribution, and requesting declaratory relief on February 9, 2011. Those claims were dismissed by Judge Whelan on September 7, 2011. A true and correct copy of the Order Granting Motion to Dismiss Cross-Complaint and Denying as Moot Motion to Transfer Venue can be accessed through PACER System, Cause Number 3-11-CV-0177-W-JMA, Document 33.

5. Plaintiff Sam Kholi Enterprises, Inc. moved to voluntarily dismiss Mr. Thompson from the California Action on March 2, 2011. See PACER System, Southern District of California, Cause Number 3:11-CV-00177-W-POR, Documents 12 and 14.

6. Mr. Thompson applies for post-judgment turnover relief. Mr. Thompson requests that the Court order Sam Kholi Enterprises, Inc., and Sam Kholi to turnover, or cause to be turned over, any judgment entered in the California Action, including interest and fees, in favor of Sam Kholi Enterprises, Inc., or Sam Kholi, or the payment of any judgment or settlement proceeds to be paid to or obtained by Sam Kholi Enterprises, Inc., or Sam Kholi. Mr. Thompson requests the turnover to be made to him directly, or, alternatively, to the Sheriff of McLennan County, Texas, for sale in execution and partial satisfaction of Mr. Thompson's judgment in this Court. Mr. Thompson also requests all orders necessary to accomplish the turnover as neither Mr. Kholi nor Sam Kholi Enterprises, Inc., is likely to voluntarily comply with any post-judgment order of this Court.

7. Pursuant to Fed. R. Civ. P. 69 and Tex. Civ. Prac. & Rem. Code §31.002(e), Mr. Thompson requests he be awarded reasonable costs, including attorneys' fees.

II. Second Request for Turnover Relief

8. On May 4, 2011, Judgment-debtor Sam Kholi Enterprises, Inc., filed in The United States District Court for the Southern District of California, a Complaint styled Case No. 3:11-cv-00970-W, *Sam Kholi Enterprises, Inc.*, a California Corporation; *Payrolling.com Corp.*, a California Corporation v. *Comsys Services, LLC*, a Delaware corporation; and *Innovative Logistics Support Services Corp.*, a Louisiana corporation; and *Does 1-10*, (hereinafter the "Kholi Action"). A true and correct copy of the Kholi Action is attached hereto as Exhibit "B".

9. Mr. Thompson applies for post-judgment turnover relief. Mr. Thompson requests that the Court order Sam Kholi Enterprises, Inc. and Sam Kholi to turnover, or cause to be turned over, any judgment entered in the Kholi Action, including interest and fees, in favor of Sam Kholi Enterprises, Inc. or Sam Kholi, or the payment of any judgment or settlement proceeds to be paid to or obtained by Sam Kholi Enterprises, Inc. Mr. Thompson requests the turnover to be made to him directly, or, alternatively, to the Sheriff of McLennan County, Texas, for sale in execution and partial satisfaction of Mr. Thompson's judgment in this Court. Mr. Thompson also requests all orders necessary to accomplish the turnover as neither Mr. Kholi nor Sam Kholi Enterprises, Inc., is likely to voluntarily comply with any post-judgment order of this Court.

10. Pursuant to Fed. R. Civ. P. 69 and Tex. Civ. Prac. & Rem. Code §31.002(e), Mr. Thompson requests he be awarded reasonable costs, including attorneys' fees.

III. Third Request for Turnover Relief

11. On or about December 14, 2010, Judgment-debtor Sam Kholi filed in The 250th District Court of Travis County, Texas, a Complaint styled Cause No. D-1-GN-10-004361, *Sam Kholi v. Steven Gregory White, an Individual; Jeffrey A. Armstrong, an Individual; and Naman, Howell, Smith & Lee, P.L.L.C., a Domestic Limited Liability Company*, (hereinafter the "Malpractice Action"). A true and correct copy of the Malpractice Action is attached hereto as Exhibit "C".

12. Mr. Thompson applies for post-judgment turnover relief. Mr. Thompson requests that the Court directly order a turnover directly to Mr. Thompson Mr. Kholi's entire interest in the Malpractice Action itself and all causes of action plead, related to, or associated with the Malpractice Action, including all files, evidence or discovery of any nature relating to or associated with that case and all underlying causes of action (whether pleaded or not). Mr.

Thompson also requests all orders necessary to accomplish the turnover as Mr. Kholi is not likely to voluntarily comply with any post-judgment order of this Court.

13. Mr. Thompson requests the Court to specifically rule that this claim is subject to turnover and that opinions to the contrary are not applicable to the facts of this order. (See, for instance, *Britton v. Seale*, 81 F.3d 602, 604 (5th Circuit 1996) and an unpublished opinion at 1997 Tex. App. Lexis 4719).

14. Pursuant to Fed. R. Civ. P. 69 and Tex. Civ. Prac. & Rem. Code §31.002(e), Mr. Thompson requests he be awarded reasonable costs, including attorneys' fees.

PRAYER

WHEREFORE, Mr. Thompson respectfully prays that the Court grant his Application for Turnover Relief, that the Court order Sam Kholi and Sam Kholi Enterprises, Inc., to turnover as requested herein (1) Sam Kholi/Sam Kholi Enterprises Inc.'s entire interest in any judgment, payment of judgment or settlement in the California Action currently pending in The United States District Court for the Southern District of California, Cause Number 3:11-CV-00177-W-POR; (2) Sam Kholi/Sam Kholi Enterprises Inc.'s entire interest in any judgment, payment of judgment or settlement in the California Action currently pending in The United States District Court for the Southern District of California, Cause Number 3:11-cv-00970-W; and (3) Sam Kholi's entire interest in the the Malpractice Action and all causes of action (whether pleaded or not) in the Malpractice Action currently pending in the 250th District Court of Travis County, Texas; and for Mr. Thompson's reasonable costs, including attorneys' fees.

Respectfully submitted,

/s/

JACK R. CREWS

State Bar No.: 05072300

J. MORGAN DRISCOLL

State Bar No.: 24065166

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ATTORNEYS FOR TOM THOMPSON DBA
THOMPSON TRUCKING

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing "*Tom R. Thompson d/b/a Thompson Trucking's Application for Post-Judgment Turnover Relief*" has been electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all attorney(s) of record, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE 5(b)(2)(D), on this the 25th day of October, 2011, addressed to:

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JACK R. CREWS

EXHIBIT “A”

CLERK OF COURT OFFICE 12
CENTRAL DIVISION

2010 DEC 21 A 9:54

SUPERIOR COURT
SAND COUNTY, CA

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Attorneys for plaintiff SAM KHOLI ENTERPRISES, INC., a California Corporation

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION**

Case No. 37-2010-00106420-CU-FR-CTL

COMPLAINT FOR:

- 1) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;
- 2) INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE;
- 3) FRAUD IN THE INDUCEMENT;
- 4) INTENTIONAL MISREPRESENTATION;
- 5) FRAUD - FORGERY;
- 6) CIVIL CONSPIRACY; AND
- 7) DECLARATORY RELIEF

SAM KHOLI ENTERPRISES, INC., a
California Corporation,

Plaintiff,

v.

TOM R. THOMPSON, individually and dba THOMPSON TRUCKING; JONES MOTOR COMPANY, INC. a Pennsylvania corporation qualified to transact intrastate business in the State of California; JONES MOTOR GROUP, INC., a subsidiary of JONES MOTOR COMPANY, INC.; and JONES EXPRESS, INC., a subsidiary of JONES MOTOR COMPANY, INC., and DOES 1 through 50, inclusive,

Defendants.

COMES NOW plaintiff SAM KHOLI ENTERPRISES, INC., a California corporation, ("SKE") and alleges against defendants, TOM R. THOMPSON, individually and dba THOMPSON TRUCKING; JONES MOTOR COMPANY, INC. a Pennsylvania corporation qualified to transact intrastate business in the State of California; JONES MOTOR GROUP, INC., subsidiary of JONES MOTOR COMPANY, INC.; and JONES EXPRESS, INC., a subsidiary of JONES MOTOR COMPANY, INC., and DOES 1 through 50, inclusive (collectively "DEFENDANTS") as follows:

PRELIMINARY ALLEGATIONS

1. SAM KHOLI ENTERPRISES, INC. ("SKE") is and was at all material times herein a California corporation residing and transacting business in and within the State of California with its principal place of business in San Diego, California.

2. SKE is informed and believes and thereon alleges that TOM R. THOMPSON, individually and dba THOMPSON TRUCKING ("THOMPSON") is and was at all material times herein an individual residing in the County of McLennan, State of Texas. SKE is further informed and believes that THOMPSON TRUCKING is a sole proprietorship doing business in the County of San Diego, State of California.

3. SKE is informed and believes and thereon alleges that JONES MOTOR COMPANY, INC., ("JMC") is a Pennsylvania corporation qualified to transact intrastate business in the State of California. SKE is further informed and believes and thereon alleges that JMC is and was at all material times herein transacting business in the County of San Diego, State of California.

4. SKE is informed and believes and thereon alleges that JONES MOTOR GROUP, INC., ("JMG") is a Pennsylvania corporation and a subsidiary of JONES MOTOR COMPANY, INC., a Pennsylvania corporation qualified to transact intrastate business in the State of California. SKE is further informed and believes and thereon alleges that JMG is and was at all material times herein transacting business in the County of San Diego, State of California.

5. SKE is informed and believes and thereon alleges that JONES EXPRESS, INC., ("EXPRESS") is a subsidiary of JONES MOTOR COMPANY, INC., a Pennsylvania corporation qualified to transact intrastate business in the State of California. SKE is further informed and believes and thereon alleges that EXPRESS is and was at all material times herein transacting business in the County of San Diego, State of California.

6. SKE is ignorant of the true names and capacities, whether individual or otherwise, of defendants sued as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. SKE will amend this complaint to allege their true names and capacities when ascertained. SKE is informed and believes, and thereon alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that SKE's injuries as herein alleged

1 were proximately caused by such defendants.

2 7. SKE is further informed and believes, and thereon alleges, that each of the defendants
3 is, and at all material times was, the agent, servant, or employee of each of the remaining defendants,
4 and was acting within the course and scope of said agency or employment with the approval, knowledge
5 and/or consent of each of the remaining defendants.

6 **VENUE AND JURISDICTION**

7 8. Jurisdiction is proper in the State of California, in and for the County of San Diego,
8 because all of the DEFENDANTS conduct business in the State of California, County of San Diego.

9 9. Venue is proper in the State of California, in and for the County of San Diego, because
10 some of the acts of DEFENDANTS alleged herein occurred in San Diego, California.

11 **GENERAL ALLEGATIONS**

12 10. In 2007, SKE's President, Sam Kholi, contacted THOMPSON after seeing his
13 advertisement seeking truck driver owner/operators in the State of California. When Mr. Kholi contacted
14 THOMPSON, the woman who answered the telephone stated "Jones Motor Group". This initially
15 confused Mr. Kholi as he thought he was calling THOMPSON. However, the woman who answered told
16 him he had the right telephone number.

17 11. After multiple telephone conversations with THOMPSON, in the fall of 2007 Mr. Kholi
18 traveled to Coryell County, Texas with the hope of purchasing THOMPSON TRUCKING, which
19 THOMPSON had informed him had a well-established customer base that Mr. Kholi could service with
20 SKE's existing inventory of tractors and trailers as well as any tractors and trailers purchased from the
21 sale of THOMPSON TRUCKING.

22 12. When Mr. Kholi met with THOMPSON, he represented to Mr. Kholi that THOMPSON
23 TRUCKING had an extensive customer list that would stay loyal and could be transferred as a legitimate
24 asset to any buyer who purchased THOMPSON TRUCKING. THOMPSON further represented to Mr.
25 Kholi that his key employees were bound by non-competition agreements and would remain with the
26 company in order to continue to serve and maintain the relationships with the customers that
27 THOMPSON had under ongoing contractual agreements.

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1 13. As discussions progressed between THOMPSON and Mr. Kholi with regard to the sale
2 of THOMPSON TRUCKING to SKE, THOMPSON traveled to San Diego, California to meet with Mr.
3 Kholi. While in San Diego, California, THOMPSON continued to discuss the terms of the agreement
4 with Mr. Kholi and he further inspected multiple real properties that were potentially to be used as
5 collateral for the sale.

6 14. Prior to entering into any agreement with THOMPSON, on or about October 7, 2007, Mr.
7 Kholi met with representatives of JMC. Unknown to Mr. Kholi at the time, THOMPSON and JMC's
8 principal, Jim Koegel, among others, were in contact with each other to coordinate with regard to the
9 representations made to Mr. Kholi as to THOMPSON's relationship with JMC and its subsidiaries.
10 Specifically, THOMPSON and JMC both represented to Mr. Kholi that JMC and its subsidiaries
11 provided various services to THOMPSON TRUCKING, including the following: (1) Computer software
12 and hardware; (2) Non-recourse accounts receivable and cash flow; (3) Liability and Cargo Insurance;
13 (4) Department of Transportation and Insurance compliance; (5) Non-recourse financing to
14 owner/operators; and (6) Lender services.

15 15. Importantly, at the time THOMPSON, JMC, and its subsidiaries made representations
16 to SKE with regard to THOMPSON's relationship with JMC, THOMPSON was subject to a legally
17 binding written agreement with EXPRESS entitled "Consulting and Non-Compete Agreement"
18 ("Consulting Agreement"). According to the express terms of the Consulting Agreement, THOMPSON
19 agreed to devote his "full working time and attention to the service of JEX and to the affairs of JEX."
20 Moreover, pursuant to the terms of the Consulting Agreement, "Thompson shall not, without the written
21 consent of JEX, directly or indirectly render services to or for a person, association, or other business
22 that competes with the interests of JEX."

23 16. At no time did THOMPSON, JMC, or any of its subsidiaries inform Mr. Kholi of the
24 contents of the Consulting Agreement, that THOMPSON was exclusively bound to work for EXPRESS,
25 or that THOMPSON was subject to a Non-Compete Agreement with EXPRESS. To the contrary, Mr.
26 Kholi did not learn of the existence of the Consulting Agreement, or the agreements which it contained
27 until at least late 2008 at the earliest.

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1 17. Based upon the above representations made by both THOMPSON and JMC and its
2 subsidiaries, among others, on October 12, 2007, Mr. Kholi and THOMPSON entered into a
3 memorandum of understanding entitled "Agreement for the Purchase and Sale of Business" wherein
4 THOMPSON agreed to sell SKE his business that included real estate valued at \$150,000.00, trailers
5 valued at \$400,000.00, other equipment valued at \$50,000.00, and goodwill valued at \$3,030,000.00 (the
6 "Agreement"). THOMPSON's valuation of the business' goodwill was based upon his long-term and
7 ongoing customer and client relationships and key employees who maintained those relationships.

8 18. As part of the Agreement, THOMPSON agreed to sign a non-compete agreement with
9 SKE and to work as SKE's employee for one year after the date of sale. In reality, however,
10 THOMPSON could not agree to sign a non-compete agreement with SKE or to work for SKE as its
11 employee for one year after the sale date because he was already bound by the terms of the Consulting
12 Agreement he previously had entered into with EXPRESS.

13 19. Pursuant to the Agreement, on or about October 12, 2007, SKE paid THOMPSON an
14 initial deposit of \$646,666.66 and began making monthly installment payments of \$16,666.00 per month
15 towards the remaining outstanding balance of \$2,983,333.34 as agreed. In turn, THOMPSON was
16 obligated to transfer title to his real property located at 206 South 8th Street, Copperas Cove, Texas
17 76522 and title to 43 trailers as well as furniture, equipment, and other tangible assets to SKE.
18 THOMPSON never transferred title to his real property to SKE, never transferred clean title to the 43
19 trailers to SKE, and ultimately blocked SKE's access to the furniture, equipment, and other tangible
20 assets. In fact, Mr. Kholi later learned that THOMPSON did not even own or hold title to the 43 trailers
21 when he entered into the Agreement. Instead, the 43 trailers were owned by EXPRESS.

22 20. In the weeks and months that followed, the terms of the sale were mutually changed
23 several times; however, THOMPSON's customer list and relationships as well as his key employees who
24 maintained those relationships remained the primary financial component of the sale.

25 21. Then in January of 2008, Mr. Kholi suspected that THOMPSON did not, in fact, have
26 a well established customer base as he represented. Instead, Mr. Kholi began to believe that
27 THOMPSON TRUCKING's business mostly relied upon third party brokers, and its most important
28 client, known as Harbor Freight, a California corporation, was actually controlled by JMC.

1 22. When Mr. Kholi voiced his concerns to THOMPSON, JMC and its subsidiaries, and
2 Harbor Freight, Mr. Kholi was assured that THOMPSON's top producing account – Harbor Freight –
3 was his actual customer and would stay with the business after the sale. Based upon this assurance, Mr.
4 Kholi paid another \$600,000.00 on January 31, 2008 towards the outstanding balance owed on the
5 purchase price.

6 23. Despite THOMPSON's representations that his key employees were bound by non-
7 compete agreements, in about March of 2008 they left SKE and began to work for JMC. Specifically,
8 SKE is informed and believes that without SKE's knowledge or consent, on or about March 6, 2008,
9 two of SKE's key employees that were part of the sale of THOMPSON TRUCKING – Nora and Debbie
10 – left SKE's office for a meeting with JMC which lasted approximately three hours. During this meeting,
11 SKE is informed and believes that JMC induced Nora and Debbie, among other SKE employees, to
12 breach their Non-Compete Agreements, leave SKE, and goto work for JMC. To this end, SKE is
13 informed and believes that JMC showed Nora and Debbie a contract between EXPRESS and Harbor
14 Freight. A representative of JMC also showed Debbie Department of Transportation Documents she had
15 signed and threatened that she could goto jail because she was not "safety" certified.

16 24. Based upon the threats and inducement of JMC and its subsidiaries, on March 10, 2008,
17 numerous key employees of SKE, including but not limited to Debbie, Nora, Leigh Ann, Karmen, Petra,
18 and Bubba, did not show up for work. Instead, on the Saturday prior they went to SKE's offices and
19 cleaned out their desks without SKE's knowledge or consent. On or about March 10, 2008, many of
20 SKE's key employees then began working for JMC.

21 25. When SKE's employees left to work for JMC, they destroyed or removed business
22 records vital to SKE's business interests and abandoned rolling truck deliveries operating at the time of
23 departure. Specifically, SKE is informed and believes that JMC induced Nora to shred the Non-Compete
24 Agreements that SKE's key employees had signed. Moreover, Mr. Kholi was unable to recover all of
25 the trailers then operating, and has unpaid invoices pursuant to those loads that were delivered as
26 promised by Mr. Kholi. Furthermore, THOMPSON locked SKE out of the computer systems regarding
27 the rolling stock as well as employee records, to the detriment of SKE's normal business operations.

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FIRST CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS)
(Alleged Against Defendants JMC, JMG, EXPRESS, and DOES 1 through 10)

11 29. On October 12, 2007, SKE purchased THOMPSON TRUCKING from THOMPSON.
12 The purchase included a transfer of THOMPSON's key employees who he represented were under Non-
13 Compete Agreements as well as transfer of THOMPSON TRUCKING's contracts with existing
14 customers including, but not limited to, Harbor Freight.

21 ● JMC, JMG, EXPRESS, and DOES 1 through 10 induced SKE's key employees to
22 violate their Non-Compete Agreements, leave SKE's employment, and goto work for
23 JMC and its subsidiaries;

24 ● JMC, JMG, EXPRESS, and DOES 1 through 10 induced Harbor Freight to breach its
25 contract with THOMPSON TRUCKING and SKE and instead to enter into an agreement
26 with JMC and its subsidiaries; and

28 / / /

JMC, JMG, EXPRESS, and DOES 1 through 10 induced THOMPSON to sell SKE 43 trailers on October 12, 2007 which he did not own, but instead were owned by EXPRESS.

31. As a result of JMC, JMG, EXPRESS, and DOES 1 through 10's intentional interference with SKE's contractual relationships with THOMPSON, key employees, and Harbor Freight, SKE could not operate the business it purchased from THOMPSON TRUCKING for \$3,630,000.00. In addition, SKE lost income as well as the ability to keep his business solvent and income-earning. Thus, SKE has been damaged in an amount in excess of \$25,000.00, the exact amount to be determined at the time of trial.

32. JMC, JMG, EXPRESS, and DOES 1 through 10 did the acts herein alleged maliciously, fraudulently and oppressively, amounting to despicable conduct, and in conscious disregard of SKE's rights. The acts alleged herein were known to JMC, JMG, EXPRESS, and DOES 1 through 10. SKE is thus entitled to recover punitive damages from JMC, JMG, EXPRESS, and DOES 1 through 10 in an amount according to proof at the time of trial.

SECOND CAUSE OF ACTION

(INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE)

(Alleged Against Defendants JMC, JMG, EXPRESS, and DOES 1 through 10)

33. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32, inclusive, as though fully set forth herein.

34. On October 12, 2007, SKE purchased THOMPSON TRUCKING from THOMPSON. THOMPSON agreed to sell SKE his business that included real estate valued at \$150,000.00, trailers valued at \$400,000.00, other equipment valued at \$50,000.00, and goodwill valued at \$3,030,000.00 (the "Agreement"). The purchase included a transfer of THOMPSON's key employees who he represented were under Non-Compete Agreements as well as transfer of THOMPSON TRUCKING's contracts with existing customers including, but not limited to, Harbor Freight.

35. JMC, JMG, EXPRESS, and DOES 1 through 10 knew an economic relationship existed between SKE and THOMPSON, SKE and its key employees, and SKE and Harbor Freight. JMC, JMG, EXPRESS, and DOES 1 through 10 knew that this economic relationship included the probability of

1 future economic benefit for SKE.

2 36. JMC, JMG, EXPRESS, and DOES 1 through 10 intentionally interfered with these
3 economic relationships. To this end, JMC, JMG, EXPRESS, and DOES 1 through 10 interfered with
4 the economic relationship between SKE and THOMPSON, key employees, and Harbor Freight as
5 follows:

- 6 • JMC, JMG, EXPRESS, and DOES 1 through 10 induced SKE's key employees to
7 violate their Non-Compete Agreements, leave SKE's employment, and goto work for
8 JMC and its subsidiaries;
- 9 • JMC, JMG, EXPRESS, and DOES 1 through 10 induced Harbor Freight to breach its
10 contract with THOMPSON TRUCKING and SKE and instead to enter into an agreement
11 with JMC and its subsidiaries; and
- 12 • JMC, JMG, EXPRESS, and DOES 1 through 10 induced THOMPSON to sell SKE 43
13 trailers on October 12, 2007 which he did not own, but instead were owned by
14 EXPRESS.

15 37. As a result of JMC, JMG, EXPRESS, and DOES 1 through 10's intentional interference
16 with SKE's prospective economic advantage, SKE could not operate the business it purchased from
17 THOMPSON TRUCKING for \$3,630,000.00. In addition, SKE lost income as well as the ability to keep
18 his business solvent and income-earning. Thus, SKE has been damaged in an amount in excess of
19 \$25,000.00, the exact amount to be determined at the time of trial.

20 38. The aforementioned acts of JAMC, JMG, EXPRESS, and DOES 1 through 10 were
21 willful, malicious, despicable, cruel, wicked and fraudulent and entitle SKE to punitive or exemplary
22 damages, the exact amount to be determined at trial.

23 **THIRD CAUSE OF ACTION**

24 **(FRAUD IN THE INDUCEMENT)**

25 **(Alleged Against Defendants JMC, JMG, EXPRESS, and DOES 1 through 10)**

26 39. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32,
27 inclusive, as though fully set forth herein.

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1 40. Beginning in or about September of 2007 and continuing thereafter until March of 2008,
 2 through their employees, agents, and/or representatives, JMC, JMG, EXPRESS, and DOES 1 through
 3 10 falsely and fraudulently and with the malicious intent to defraud and deceive SKE and induce SKE
 4 to enter into an agreement to purchase THOMPSON TRUCKING made the oral representations to Mr.
 5 Kholi as set forth above including but not limited to the following:

- 6 • JMC, JMG, EXPRESS, and DOES 1 through 10 failed to disclose that THOMPSON was
 7 legally bound by the terms of the Consulting Agreement, that THOMPSON was
 8 exclusively bound to work for JMC and its subsidiaries, and that THOMPSON was
 9 subject to a Non-Compete agreement. Instead, JMC, JMG, EXPRESS, and DOES 1
 10 through 10 represented to Mr. Kholi that THOMPSON was legally able to enter into an
 11 agreement to sell THOMPSON TRUCKING to SKE, which included a clause that
 12 required THOMPSON to sign a Non-Compete Agreement with SKE and to work for
 13 SKE for one year from the date of purchase; and
- 14 • JMC, JMG, EXPRESS, and DOES 1 through 10 represented to Mr. Kholi that Harbor
 15 Freight was not a customer of JMC, JMG, or EXPRESS, but instead was a customer of
 16 THOMPSON.

17 41. Through their employees, agents and/or representatives, JMC, JMG, EXPRESS, and
 18 DOES 1 through 10's representations were false and then known by JMC, JMG, EXPRESS, and DOES
 19 1 through 10 in that JMC, JMG, EXPRESS, and DOES 1 through 10 despicably knew that THOMPSON
 20 was not legally able to enter into the Agreement for the purchase of THOMPSON TRUCKING because
 21 THOMPSON was legally bound to exclusively work for EXPRESS and was subject to a Non-Compete
 22 Agreement with EXPRESS. Moreover, JMC, JMG, EXPRESS, and DOES 1 through 10 despicably
 23 knew that Harbor Freight was a customer of JMC and its subsidiaries, not of THOMPSON TRUCKING.

24 42. JMC, JMG, EXPRESS, and DOES 1 through 10 fraudulently induced SKE to enter into
 25 the Agreement with THOMPSON TRUCKING with the despicable intent of having all of
 26 THOMPSON's debts owed to it paid off with the monies paid by SKE and then with the despicable
 27 intent of thereafter taking over SKE's business by inducing key employees and customers to leave SKE
 28 for JMC and its subsidiaries, despicably not caring about SKE's interests and maliciously scheming to

1 increase JMC and its subsidiaries' own profits and wealth at SKE's expense. The intentional
2 misrepresentations and fraudulent non-disclosures made by employees and/or agents of JMC, JMG,
3 EXPRESS, and DOES 1 through 10 caused SKE damage in that SKE was induced into purchasing
4 THOMPSON TRUCKING for \$3,630,000.00, a business SKE ultimately lost because of JMC, JMG,
5 EXPRESS, and DOES 1 through 10's despicable conduct.

6 43. The representations made by agents and/or employees of JMC, JMG, EXPRESS, and
7 DOES 1 through 10 were made with the intent to defraud SKE, and were made for the purpose of
8 inducing SKE to rely upon them.

9 44. SKE was unaware of the true facts but instead acted in justifiable reliance upon the
10 representations made by JMC, JMG, EXPRESS, and DOES 1 through 10 because they were
11 corporations in good standing the agents and/or employees of whom had given Mr. Kholi no indication
12 that they would make intentional misrepresentations to induce him into entering into the Agreement with
13 THOMPSON.

14 45. At the time the misrepresentations were made and at the time SKE took the actions herein
15 alleged, SKE was ignorant of JMC, JMG, EXPRESS, and DOES 1 through 10's secret intention to
16 induce SKE into the Agreement to have THOMPSON's debt owed to it paid off and then to thereafter
17 take the business away from SKE. If SKE had known of the actual intentions of JMC, JMG, EXPRESS,
18 and DOES 1 through 10, it would not have entered into the Agreement with THOMPSON in reasonable
19 reliance thereon.

20 46. SKE reasonably believed and relied on said representations made by JMC, JMG,
21 EXPRESS, and DOES 1 through 10 because he had no reason to doubt their accuracy, and in reliance
22 upon said representations, SKE was induced to take the actions detailed herein.

23 47. As a direct and proximate result of JMC, JMG, EXPRESS, and DOES 1 through 10's
24 fraud and deceit and the facts herein alleged, SKE has been damaged in an amount in excess of
25 \$3,630,000.00, the exact amount to be proven at the time of trial.

26 48. As shown in the facts pleaded, JMC, JMG, EXPRESS, and DOES 1 through 10's conduct
27 described in this Complaint, all of which is incorporated herein by this reference, was intended by JMC,
28 JMG, EXPRESS, and DOES 1 through 10 to cause injury to SKE or was despicable conduct carried on

1 by JMC, JMG, EXPRESS, and DOES 1 through 10 with a cruel and unjust hardship in conscious
 2 disregard of SKE's rights, and was conducted with the intention to deprive SKE of property, legal rights
 3 or otherwise cause injury, such as to constitute malice under California Code of Civil Code section 3294.
 4 JMC, JMG, EXPRESS, and DOES 1 through 10's acts were done knowingly, willfully, and with
 5 malicious intent, with a conscious disregard of the rights of others conduct that subjected SKE to cruel
 6 and unjust hardship in conscious disregard of SKE's rights, such that SKE is entitled to punitive damages
 7 in an amount appropriate to punish or set an example of JMC, JMG, EXPRESS, and DOES 1 through
 8 10, in an amount to be determined by proof at trial.

9 **FOURTH CAUSE OF ACTION**

10 **(INTENTIONAL MISREPRESENTATION)**

11 **(Alleged Against Defendants JMC, JMG, EXPRESS, and DOES 1 through 10)**

12 49. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32,
 13 inclusive, as though fully set forth herein.

14 50. Prior to SKE entering into the Agreement with THOMPSON and from October 12, 2007
 15 until March of 2008, through their agents and/or employees, JMC, JMG, EXPRESS, and DOES 1
 16 through 10 represented, among other things, that THOMPSON was not exclusively legally bound to
 17 JMC, JMG, EXPRESS, and DOES 1 through 10 and was not subject to a Non-Compete Agreement with
 18 them. Moreover, prior to SKE entering into the Agreement with THOMPSON and then on one more
 19 than one occasion between October 12, 2007 to March, 2008, agents and/or employees of JMC, JMG,
 20 EXPRESS, and DOES 1 through 10 expressly told Mr. Kholi that Harbor Freight was a customer of
 21 THOMPSON TRUCKING, not JMC or any of its subsidiaries.

22 51. The representations that agents and/or employees of JMC, JMG, EXPRESS, and DOES
 23 1 through 10 made were false. The true facts were that THOMPSON was legally bound by the terms
 24 of the Consulting Agreement, including but not limited to, that THOMPSON was to exclusively work
 25 for EXPRESS and that THOMPSON was bound by a Non-Compete Agreement. Moreover, the true facts
 26 were that Harbor Freight was at all times a customer of JMC and its subsidiaries. Agents and/or
 27 employees of JMC and its subsidiaries made these representations to induce SKE into entering into the
 28 Agreement to purchase THOMPSON TRUCKING because all of THOMPSON's debts owed to JMC

1 and its subsidiaries were to be paid in full by the proceeds from the sale. JMC, JMG, EXPRESS, and
 2 DOES 1 through 10 knew that SKE would not enter into the Agreement if he did not receive said
 3 representations from the agents and/or employees of JMC, JMG, EXPRESS, and DOES 1 through 10.

4 52. When the agents and/or employees of JMC, JMG, EXPRESS, and DOES 1 through 10
 5 made these representations, they knew, or should have known them to be false, but agents and/or
 6 employees of JMC, JMG, EXPRESS, and DOES 1 through 10 made these representations with the intent
 7 to induce SKE into entering the aforementioned Agreement and paying money in furtherance thereof.

8 53. SKE, at the time these representations were made by agents and/or employees of JMC,
 9 JMG, EXPRESS, and DOES 1 through 10, and at the time SKE entered into the Agreement and paid
 10 money thereunder, was ignorant of the falsity of JMC, JMG, EXPRESS, and DOES 1 through 10's
 11 agents and/or employees' representations and believed them to be true.

12 54. SKE's reliance on JMC, JMG, EXPRESS, and DOES 1 through 10's representations was
 13 reasonable, because there was nothing in SKE's dealings with the DEFENDANTS, and each of them,
 14 during the negotiation of the Agreement which indicated that DEFENDANTS were misrepresenting any
 15 material facts. SKE relied upon JMC, JMG, EXPRESS, and DOES 1 through 10's representations
 16 because they represented themselves as knowledgeable and honest business people.

17 55. As a result of the intentional misrepresentations by JMC, JMG, EXPRESS, and DOES
 18 2 through 10, SKE has suffered injuries in an amount greater than twenty-five thousand dollars, the exact
 19 amount to be proven at trial.

20 56. The aforementioned acts of JMC, JMG, EXPRESS, and DOES 1 through 10 were wilful,
 21 wanton, and malicious. JMC, JMG, EXPRESS, and DOES 1 through 10 are therefore responsible to
 22 SKE for punitive and exemplary damages in an amount to be plead separately.

23 **FIFTH CAUSE OF ACTION**

24 **(FRAUD - FORGERY)**

25 **(Alleged Against All DEFENDANTS)**

26 57. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32,
 27 inclusive, as though fully set forth herein.

28 ///

1 Title to 43 Trailers

2 58. On October 12, 2007, SKE entered into the Agreement. A term of the Agreement was
3 that THOMPSON would sell SKE 43 trailers that THOMPSON represented that he owned for
4 \$400,000.00. SKE later learned that on October 12, 2007, THOMPSON did not own the 43 trailers.
5 Instead, on October 12, 2007, title to the 43 trailers was held by EXPRESS.

6 59. Despite this, DEFENDANTS, and each of them, represented to SKE and Mr. Kholi that
7 THOMPSON owned the 43 trailers in question. As a result, SKE paid THOMPSON \$400,000.00 for
8 43 trailers on October 12, 2007, which THOMPSON did not own.

9 60. Thereafter, in or about March of 2008, by means of forged, false and fraudulent means,
10 EXPRESS attempted to transfer title to the 43 trailers to THOMPSON, who in turn attempted to transfer
11 title to SKE. In so doing, DEFENDANTS, and each of them, fraudulently represented the date on the
12 transfers as October 12, 2007. However, in reality, the title to the 43 trailers was not attempted to be
13 transferred until March of 2008.

14 61. Moreover, in attempting to transfer title to the 43 trailers to SKE, DEFENDANTS, and
15 each of them, used false and fraudulent means to forge Mr. Kholi's name on the title's to each of the
16 trailers. In reality, Mr. Kholi never signed any of the titles, and further never did so on October 12, 2007
17 as represented on the titles.

18 62. The fact Mr. Kholi never signed any of the titles was not the only fraud employed by
19 DEFENDANTS. Here, the titles themselves state that they must be signed in front of a notary or by an
20 issuing agent who is licensed as a vehicle dealer by the Pennsylvania State Board of Vehicle
21 Manufacturers, Dealers and Salespersons, or its employee. Here, none of the 43 titles were signed before
22 a notary. Moreover, SKE is informed and believes that none of the titles were signed by an issuing agent
23 as required under Pennsylvania law. Despite this, DEFENDANTS, and each of them, have attempted
24 to fraudulently hold the 43 titles – none of which were signed by Mr. Kholi – out as transferring title to
25 the 43 trailers to SKE.

26 63. By these fraudulent and unlawful means, DEFENDANTS, and each of them,
27 misappropriated from SKE and converted to their personal use and possession \$400,000.00 for allegedly
28 the purchase of the 43 trailers, clean title to which has never been produced.

64. By virtue of the wrongful acts of DEFENDANTS, and each of them, SKE is informed and believes and thereon alleges that DEFENDANTS, and each of them, fraudulently converted \$400,000.00, the exact amount to be proven at the time of trial.

65. The aforementioned conduct of DEFENDANTS, and each of them, was an intentional deceit and concealment of a material fact known to them with the intention on the part of DEFENDANTS, and each of them, to deprive SKE of property or legal rights or otherwise causing injury, and was despicable conduct that subjected SKE to cruel and unjust hardship in conscious disregard of SKE's rights, so as to justify an award of exemplary and punitive damages.

SIXTH CAUSE OF ACTION

(CIVIL CONSPIRACY)

(Alleged Against All DEFENDANTS)

66. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32, inclusive, as though fully set forth herein.

67. DEFENDANTS, and each of them, in taking the actions as more fully set forth herein above, entered into a common plan, scheme, and conspiracy to induce SKE to enter into the Agreement to purchase THOMPSON TRUCKING through intentional misrepresentations and non-disclosures and to further interfere with SKE's rights in an attempt to gain control over SKE's business, among other things.

68. More specifically, SKE is informed and believes, and thereon alleges, that DEFENDANTS entered into a common plan, scheme, and conspiracy to induce SKE to enter into the Agreement to purchase THOMPSON TRUCKING and pay THOMPSON in excess of \$3,000,000.00 so that THOMPSON could pay off his outstanding debt owed to JMC, JMG, and EXPRESS and then JMC, JMG, and EXPRESS could take over SKE's business. Further, DEFENDANTS actually set out to disrupt SKE's business not only by making intentional misrepresentations and non-disclosures, but by causing SKE to lose its key employees and contract with Harbor Freight.

69. As a direct and proximate result of the conduct of DEFENDANTS, and each of them, SKE has suffered substantial compensable losses, including but not limited to the loss of the business purchased from THOMPSON for \$3,630,000.00, the exact nature and extent of which are not yet fully

1 ascertained, proof of which will be offered at the time of trial.

2 70. The aforementioned acts of DEFENDANTS, and each of them, were intended to injure
3 SKE, and were in conscious disregard to the rights of SKE, and were undertaken with the knowledge
4 of probable injury to SKE's interests, and were therefore willful, oppressive, and wanton, and undertaken
5 with malice, and constitute despicable conduct. Therefore, SKE is entitled to punitive and exemplary
6 damages, according to proof at the time of trial.

7 **SEVENTH CAUSE OF ACTION**

8 **(DECLARATORY RELIEF)**

9 **(Alleged Against All DEFENDANTS)**

10 71. SKE hereby realleges and incorporates herein by this reference Paragraphs 1 through 32,
11 inclusive, as though fully set forth herein.

12 72. An actual controversy presently exists between SKE and DEFENDANTS, and each of
13 them, as to whether DEFENDANTS, and each of them, transferred SKE clean title to the 43 trailers. To
14 this end, SKE contends as alleged above that title to the 43 trailers was not properly transferred to him
15 in compliance with the requirements of the State of Pennsylvania but instead were transferred unlawfully
16 and with the use of forged signatures purporting to be that of Mr. Kholi.

17 73. SKE desires a judicial determination of whether DEFENDANTS, and each of them,
18 transferred clean title to the 43 trailers to him. Otherwise, SKE will not have clean title to the 43 trailers
19 and will not be able to transfer title to other purchasers as it sees fit.

20 74. A judicial determination is necessary and appropriate at the present time under all the
21 circumstances so that SKE may ascertain its rights and duties as to ownership of the 43 trailers.

22 **PRAYER**

23 **WHEREFORE**, SAM KHOLI ENTERPRISES, INC. respectfully prays for judgment as
24 follows:

25 **FIRST CAUSE OF ACTION (Intentional Interference with Contractual Relations)**

26 1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of
27 trial, together with interest thereon from the date of the damages;

28 2. For costs of the suit herein incurred;

1 3. For punitive and exemplary damages in an amount to be determined at trial;

2 4. For such other and further relief as the court may deem proper.

3 **SECOND CAUSE OF ACTION (Intentional Interference With Prospective Business Advantage)**

4 1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of
5 trial, together with interest thereon from the date of the damages;

6 2. For costs of the suit herein incurred;

7 3. For exemplary and punitive damages in an amount to be determined at trial;

8 4. For such other and further relief as the court may deem proper.

9 **THIRD CAUSE OF ACTION (Fraud in the Inducement)**

10 1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of
11 trial, together with interest thereon from the date of the damages;

12 2. For costs of the suit herein incurred;

13 3. For exemplary and punitive damages in an amount to be determined at trial;

14 4. For such other and further relief as the court may deem proper.

15 **FOURTH CAUSE OF ACTION (Intentional Misrepresentation)**

16 1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of
17 trial, together with interest thereon from the date of the damages;

18 2. For costs of the suit herein incurred;

19 3. For exemplary and punitive damages in an amount to be determined at trial;

20 4. For such other and further relief as the court may deem proper.

21 **FIFTH CAUSE OF ACTION (Fraud - Forgery)**

22 1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of
23 trial, together with interest thereon from the date of the damages;

24 2. For costs of the suit herein incurred;

25 3. For exemplary and punitive damages in an amount to be determined at trial;

26 4. For such other and further relief as the court may deem proper.

27 **SIXTH CAUSE OF ACTION (Civil Conspiracy)**

1. For damages in excess of \$25,000.00, the exact amount to be determined at the time of trial, together with interest thereon from the date of the damages;
2. For costs of the suit herein incurred;
3. For exemplary and punitive damages in an amount to be determined at trial;
4. For such other and further relief as the court may deem proper.

SEVENTH CAUSE OF ACTION (Declaratory Relief)

1. That the Court determine the following:
 - DEFENDANTS, and each of them, failed to transfer clean title to the 43 trailers to SKE which resulted in damage to SKE in an amount in excess of \$400,000.00, the exact amount to be determined at trial; and
 - DEFENDANTS, and each of them, are required to transfer clean title to the 43 trailers to SKE.
2. For costs of the suit herein incurred;
3. For such other and further relief as the court may deem proper.

Dated: December 20, 2010

LAW OFFICES OF AMELIA A. McDERMOTT

By:

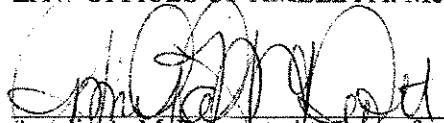

Amelia A. McDermott, Attorneys for
plaintiff, SAM KHOLI ENTERPRISES, INC.

EXHIBIT “B”

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8 Attorneys for PLAINTIFFS

9 **IN AND FOR THE UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SAM KHOLI ENTERPRISES, INC., a
 12 California corporation;
 13 PAYROLLING.COM CORP., a California
 Corporation,

14 Plaintiff,

15 v.

16 COMSYS SERVICES, LLC, a Delaware
 17 corporation; and INNOVATIVE
 18 LOGISTICS SUPPORT SERVICES
 CORP., a Louisiana corporation; and DOES
 1-10,

20 Defendants.

Case No. **'11CV0970 W NLS**

COMPLAINT FOR RELIEF AND
 DEMAND FOR JURY TRIAL AS
 FOLLOWS:

- 1) BREACH OF CONTRACT;
- 2) BREACH OF THE IMPLIED
COVENANT OF GOOD
FAITH AND FAIR
DEALING;
- 3) ACCOUNT STATED; AND
- 4) QUANTUM MERUIT

21
 22 Plaintiffs SAM KHOLI ENTERPRISES, INC., a California corporation doing
 23 business as PAYROLLING.COM ("SKE") and PAYROLLING.COM CORP.
 24 ("PAYROLLING") by their undersigned attorney, for their claims against defendants,
 25 COMSYS SERVICE, LLC, a Delaware corporation ("COMSYS"); INNOVATIVE
 26 LOGISTICS SUPPORT SERVICES CORP., a Louisiana corporation ("ILSS"); and
 27 DOES 1 through 10 (collectively "DEFENDANTS"), allege as follows:

28 ///

JURISDICTION AND VENUE

1
2 1. This Court has original jurisdiction over the subject matter of this action
3 under 28 United States Code section 1332.

4 2. With respect to the Court's jurisdiction under 28 United States Code section
5 1332, plaintiff is domiciled in the State of California, where it has its principal place of
6 business. Defendants are corporations organized and existing under the laws of the State
7 of Delaware and the State of Louisiana and are domiciliaries of the states of Texas and
8 Louisiana. The amount in controversy, without interest and costs, exceeds \$75,000.00,
9 as discussed below.

10 3. Venue is proper in this judicial district pursuant to 28 United States Code
11 section 1391(c).

PARTIES

12
13 4. SKE is a corporation incorporated, organized and existing under the laws
14 of the State of California, which has as its principal place of business the County of San
15 Diego, California. SKE has filed a fictitious business filing with the County of San Diego
16 designating that it is doing business as Payrolling.com. SKE is in the business of offering
17 services in the area of payroll, human resources, outsourcing, best practices, benefits,
18 recruiting, and work force planning.

19 5. PAYROLLING is a corporation incorporated, organized and existing under
20 the laws of the State of California, which has as its principal place of business the
21 County of San Diego, California. PAYROLLING is in the business of offering services
22 in the area of payroll, human resources, outsourcing, best practices, benefits, recruiting,
23 and work force planning.

24 6. Defendant COMSYS is a corporation incorporated, organized, and existing
25 under the laws of the State of Delaware. It has as one of its principal places of business
26 in Houston, Texas. COMSYS operates as an information technology staffing, services,
27 and solutions provider.

28 ///

1 7. Defendant ILSS is a corporation incorporated, organized, and existing under
2 the laws of the State of Louisiana. It has as its principal place of business New Orleans,
3 Louisiana. ILSS is a third-party resource company that assists individuals, corporations,
4 and the government in lowering their break-even point and eliminating a large portion
5 of overhead.

6 8. The true names and capacities, whether individual, corporate, associate,
7 representative or other, of DOES 1 through 10, inclusive, are unknown to SKE, who
8 therefore sues them by such fictitious names. SKE will seek leave to amend this
9 complaint to show the true names and capacities of said defendants when they are
10 ascertained. SKE is informed and believes, and thereupon alleges, that each of the
11 defendants named as a DOE, along with the named DEFENDANTS, is responsible in
12 some manner for the occurrences herein alleged, and that SKE's injuries herein alleged
13 were legally or proximately caused by said DEFENDANTS. Wherever it is alleged that
14 any act or omission was also done or committed by any specifically named
15 DEFENDANT, or by DEFENDANTS generally, SKE intends thereby to allege, and does
16 allege, that the same act or omission was also done and committed by each and every
17 defendant named as a DOE, and each named DEFENDANT, both separately and in
18 concert or conspiracy with the named DEFENDANTS.

19 9. PLAINTIFFS are informed and believe and thereon allege that at all
20 material times herein alleged DEFENDANTS, and each of them whether known or
21 unknown, were the agents, principals, employers, servants, employees and co-
22 conspirators of the other DEFENDANTS, and each of them, whether named or unnamed,
23 and at all relevant times herein, was acting within the scope of their authority as such
24 agents, principals, employees, employers, and co-conspirators with permission and
25 consent of the remaining named and unnamed DEFENDANTS.

26 10. Whenever in this Complaint an act or omission of a corporation, limited
27 liability company, or other such business entity is alleged, the said allegation shall be
28 deemed to mean and include an allegation that the corporation, limited liability company,

1 or other such business entity acted or omitted to act through its authorized officers,
2 directors, shareholders, members, managers, agents, servants, authorized representatives
3 and/or employees, acting within the course and scope of their duties, that the acts or
4 omissions were authorized and ratified by the business entities' shareholders, members,
5 officers, directors and/or managers.

6 **NATURE OF ACTION**

7 11. SKE brings this action to recover damages it has suffered as a result of
8 DEFENDANTS', and each of them, breaches of contract and failure to pay for services
9 provided by SKE and/or PAYROLLING during the period between January 1, 2008 and
10 June 30, 2010.

11 **DEFENDANTS' WRONGFUL COURSE OF CONDUCT**

12 12. SKE had an integrated relationship with the DEFENDANTS in this case.
13 To this end, BMC Software, Inc. ("BMC") was SKE's client. However, BMC did not pay
14 SKE directly. Instead, SKE would issue an invoice to BMC. BMC was then obligated
15 to pay COMSYS within 15 days of receipt of SKE's invoice. COMSYS would then pay
16 ILSS within seven days of payment from BMC. ILSS would then provide SKE with
17 immediate access to its funds for payment of the BMC invoice.

18 **The COMSYS Agreement**

19 13. On April 4, 2005, SKE entered into a Supplier Participation Agreement for
20 BMC Software, Inc. VMS Program with COMSYS ("COMSYS Agreement"). A true and
21 correct copy of the COMSYS Agreement is attached hereto as Exhibit "A" and its terms
22 are incorporated herein by reference as though fully set forth.

23 14. Pursuant to Paragraph 1 of the COMSYS Agreement, COMSYS was the
24 managed service provider for BMC. Pursuant to Paragraph 5 of the COMSYS
25 Agreement, COMSYS submitted work orders to SKE. SKE then performed personnel
26 services for BMC through COMSYS as its managed service provider based upon the
27 work orders. COMSYS was then obligated to pay SKE on behalf of BMC within 15 days
28 of receipt of SKE's bi-weekly consolidated invoice.

1 15. SKE, for its part, performed all terms and conditions of the COMSYS
2 Agreement which were not excused, waived or discharged. SKE paid up to 50 BMC
3 employees at a time per pay period, basing its payments on digital records provided by
4 COMSYS for work allegedly performed by BMC employees. At one time, SKE was
5 advancing approximately \$100,000.00 a week to BMC employees pursuant to the
6 COMSYS Agreement.

7 16. Beginning on or about January 1, 2008 and continuing until approximately
8 June 30, 2010, COMSYS breached the COMSYS Agreement in multiple ways to SKE's
9 detriment in an amount in excess of \$75,000.00, the exact amount to be proven at the
10 time of trial, including but not limited to: (1) COMSYS failed to pay SKE what it owed
11 SKE as BMC's managed service provider for BMC's payroll to BMC's employees
12 funded by SKE; and (2) COMSYS misrepresented to SKE that some of BMC's
13 employees were qualified as 1099 when they were not.

14 17. When in approximately May of 2010 SKE noticed large discrepancies
15 between what COMSYS was paying to SKE and what appeared to be owed, SKE
16 immediately contacted COMSYS in an attempt to resolve the issue. Unfortunately, in
17 response COMSYS stonewalled SKE and refused to discuss in good faith the dispute,
18 blaming the Fieldglass software BMC used to record its employees' time instead.

19 **The ILSS Agreement With BMC**

20 18. On or about August 25, 2008, SKE's relationship with BMC and COMSYS
21 was altered by the Addendum to Master Services Agreement entered into between BMC
22 and ILSS. A true and correct copy of ILSS's Agreement with BMC is attached hereto as
23 Exhibit "B" and its terms are incorporated herein by reference as though fully set forth.

24 19. Just as with SKE, ILSS's Agreement with BMC states as follows:

25 "BMC has chosen to use a third party to administer the process of
26 obtaining the services of temporary technical or other personnel
27 ("Personnel") to provide services to BMC through a managed service
28 provider program. .. The third party administrator is COMSYS
Information Technology Services, Inc. ("COMSYS").

1 Under the MSP Program, BMC will submit on-line requisitions for
2 services to be performed by temporary technical or other personnel
3 ("Job Postings") requesting candidate submissions from all or specific
4 contractor(s). The Job Postings will be distributed to contractors
electronically, utilizing a web-based application (the "Application")
hosted and maintained by its licensor, Fieldglass, as further described
below.

5 Upon receipt of candidate, submissions from contractors responsive to
6 the Job Postings, COMSYS will review same on behalf of BMC. BMC
7 will then submit electronic orders via the Application, to a specific
contractor for the selected individual ("Work Order"). [See Exhibit
"C", ¶¶ 1.1 - 1.3].

8 20. This Agreement between BMC and ILSS was then subcontracted to SKE
9 according to the Statement of Work (SOW) specifically for the BMC Agreement
10 awarded to ILSS and subcontracted to SKE, A true and correct copy of the SOW is
11 attached hereto as Exhibit "C" and its terms are incorporated herein by reference as
12 though fully set forth.

13 21. Pursuant to the terms of the SOW, SKE's responsibilities included: (1) Full
14 administration and oversight of the day to day operations of the program; (2) Payrolling
15 all BMC workers as assigned/designated in the COMSYS Software; (3) Management and
16 liability for all invoices and invoicing issues; (4) Customer service support to BMC,
17 COMSYS and employees; (5) Maintenance of all insurances as required and necessary
18 by the Master Service Agreement between BMC/COMSYS and ILSS/SKE; (6)
19 Management of funds being transferred to and from SKE and ILSS's joint banking
20 account as set -up by ILSS; (7) Facilitating and managing staffing relationship and
21 positions when appropriate; and (8) Maintaining adequate workforce to manage the
22 account.

23 22. Pursuant to the terms of the SOW, ILSS's responsibilities included: (1)
24 advising SKE of any items that require attention; (2) Giving SKE immediate access to
25 funds when transferred from COMSYS into SKE and ILSS's joint banking account; (3)
26 Help negotiate items as requested/needed; and (4) Provide on-going non-specific support
27 as requested by SKE.

28 ///

1 23. SKE for its part, performed all terms and conditions of the SOW which were
2 not excused, waived or discharged. ILSS did not. Instead, ILSS breached the SOW in
3 multiple ways to SKE's detriment in an amount in excess of \$75,000.00, the exact
4 amount to be proven at the time of trial, including but not limited to ILSS failed to pay
5 SKE what it owed SKE as BMC's managed service provider for BMC's payroll to
6 BMC's employees funded by SKE.

7 **SKE Agreement With ILSS**

8 24. In addition to SKE's SOW with ILSS with respect to the BMC Agreement,
9 on or about January 2, 2004 SKE and ILSS also entered into a Payrolling.com General
10 Payrolling Agreement (the "ILSS Agreement"). A true and correct copy of the ILSS
11 Agreement is attached hereto as Exhibit "D" and its terms are incorporated herein by
12 reference as though fully set forth.

13 25. SKE, for its part, performed all terms and conditions of the ILSS Agreement
14 which were not excused, waived or discharged. ILSS did not. Instead, beginning in or
15 about May of 2007, ILSS breached the ILSS Agreement by failing to inform SKE that
16 various of its employees traveled. As ILSS was aware, any employee that traveled was
17 subject to a 3% markup. Despite this, ILSS failed to inform SKE of which employees
18 were subject to the 3% markup.

19 26. Although SKE has made repeated requests and demands for information
20 related to the employees to which a 3% markup applied, ILSS refused and continues to
21 refuse to provide SKE with the necessary information as required pursuant to the terms
22 of the ILSS Agreement. As a result, there is an amount due and owing from ILSS to SKE
23 for the 3% markup for all employees that traveled, the exact amount to be proven at the
24 time of trial.

25 27. Moreover, during the course of SKE's relationship with ILSS, on at least
26 two separate occasions, ILSS claimed SKE and PAYROLLING overcharged it in the
27 amount of \$58,000.00 and \$232,000.0, respectively. Without any proof or
28 documentation, SKE and PAYROLLING refunded these funds to ILSS. SKE and

1 PAYROLLING have now determined that the refunds issued to ILSS were not
2 warranted. Instead, ILSS is obligated to return the refunded funds to SKE and
3 PAYROLLING. Despite demand for return of the refunded funds, ILSS has refused and
4 continues to refuse to return the refunded funds to SKE and PAYROLLING. As a result,
5 SKE and PAYROLLING have been damaged in an amount in excess of \$290,000.00, the
6 exact amount to be proven at the time of trial.

7 **FIRST CLAIM**

8 **(BREACH OF CONTRACT AGAINST ALL DEFENDANTS)**

9 28. PLAINTIFFS reallege and incorporate by reference as though fully set forth
10 herein paragraphs 1 through 27 as set forth above.

11 **The COMSYS Agreement**

12 29. On or about April 4, 2005, SKE and COMSYS entered into the COMSYS
13 Agreement as set forth above.

14 30. SKE duly performed those terms of the COMSYS Agreement which were
15 not excused or discharged. Beginning in or about January 1, 2008, however, COMSYS
16 breached the COMSYS Agreement by failing to pay SKE for services rendered to BMC
17 and thereafter failing to deal in good faith with SKE as required by the terms of the
18 COMSYS Agreement resulting in damages in excess of \$75,000.00, the exact amount
19 to be proven at the time of trial. COMSYS also mis-classified BMC employees as
20 independent contractors in order to evade payroll taxes, thus causing State authorities to
21 audit SKE for misclassifying these employees as independent contractors. The potential
22 liability to SKE arising from this audit is, as of the date below written, unknown, but it
23 could be in excess of \$4,000,000.00.

24 31. As a direct and proximate result of COMSYS's material breaches of the
25 COMSYS Agreement, SKE has suffered damages in an amount in excess of \$75,000.00
26 which will be proven at trial, plus prejudgment interest, finance charges, attorneys' fees,
27 costs, and expenses.

28 ///

1 **ILSS Agreement with BMC**

2 32. On or about August 25, 2008, ILSS and BMC entered into an agreement as
3 set forth above which included a SOW specifically between SKE and ILSS.

4 33. SKE duly performed those terms of the SOW which were not excused or
5 discharged. Beginning in or about June of 2010, however, ILSS breached the SOW by
6 failing to pay SKE for services rendered to BMC resulting in damages in excess of
7 \$75,000.00, the exact amount to be proven at the time of trial.

8 34. As a direct and proximate result of ILSS's material breaches of the SOW,
9 SKE has suffered damages in an amount in excess of \$75,000.00 which will be proven
10 at trial, plus prejudgment interest, finance charges, attorneys' fees, costs, and expenses.

11 **The ILSS Agreement**

12 35. On or about January 2, 2004, SKE and ILSS entered into the ILSS
13 Agreement as set forth above.

14 36. SKE duly performed those terms of the ILSS Agreement which were not
15 excused or discharged. Beginning in or about March of 2007, however, ILSS breached
16 the ILSS Agreement by failing to disclose to SKE which of its employees were traveling
17 and therefore subject to a 3% markup resulting in damages to SKE in an amount
18 currently unknown but which will be proven at the time of trial.

19 37. In addition, beginning in or about June of 2009 and again in March of 2010,
20 ILSS requested refunds from SKE and PAYROLLING in the approximate amounts of
21 \$58,000.00 and \$232,000.00, respectively, which were issued. SKE and PAYROLLING
22 have learned that the refunds issued to ILSS were not justified. In breach of the ILSS
23 Agreement, however, ILSS had failed and refused and continues to fail and refuse to
24 return the refunded funds to SKE and PAYROLLING to the detriment of PLAINTIFFS
25 in an amount in excess of \$290,000.00, the exact amount to be proven at the time of trial.

26 ///

27 ///

28 ///

**(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND
FAIR DEALING AGAINST ALL DEFENDANTS)**

///

1 43. As a direct and proximate result of DEFENDANTS', and each of them,
2 misconduct as alleged herein, SKE has suffered damages in an amount in excess of
3 \$75,000.00, which will be proven at trial, plus prejudgment interest, finance charges,
4 attorneys' fees, costs, and expenses.

5 **THIRD CLAIM**

6 **(ACCOUNT STATED AGAINST ALL DEFENDANTS)**

7 44. PLAINTIFFS reallege and incorporate by reference as though fully set forth
8 herein paragraphs 1 through 43 as set forth above.

9 45. Between January 1, 2008 and the present, at San Diego, California,
10 DEFENDANTS, and each of them, became indebted to SKE on an account stated in the
11 amount in excess of \$1,924,285.70 for SKE's services delivered to DEFENDANTS.

12 45. SKE has repeatedly demanded payment from DEFENDANTS and has not
13 received it. Despite the demands, there is now owing the sum of at least \$1,924,285.70,
14 not including interest, attorney's fees, costs, and expenses.

15 46. As a direct and proximate result of DEFENDANTS', and each of them,
16 failure to pay for the services provided by SKE, SKE has suffered damages in an amount
17 estimated to exceed \$1,924,285.70, and which to be proven at trial, plus prejudgment
18 interest, finance charges, attorney's fees, costs, and expenses.

19 **FOURTH CLAIM**

20 **(QUANTUM MERUIT AGAINST ALL DEFENDANTS)**

21 47. PLAINTIFFS reallege and incorporate by reference as though fully set forth
22 herein paragraphs 1 through 46 as set forth above.

23 48. Between March of 2007 and the present, at San Diego, California,
24 DEFENDANTS, and each of them, became indebted to PLAINTIFFS for work, labor and
25 services furnished at the special instance and request of DEFENDANTS. The reasonable
26 value for this work, labor and services is in excess of \$2,000,000.00.

27 49. DEFENDANTS, and each of them, knew or had reason to know that the
28 work, labor, and services received from PLAINTIFFS were supplied by PLAINTIFFS

1 because DEFENDANTS accepted those services and PLAINTIFFS sent monthly
2 invoices to DEFENDANTS for that work, labor and services.

3 50. Despite PLAINTIFFS repeated demands for payment, DEFENDANTS, and
4 each of them, failed and refused to pay the reasonable value of the work, labor and
5 services provided by PLAINTIFFS and there is now due and owing from
6 DEFENDANTS, and each of them, to PLAINTIFFS a sum in excess of \$2,000,000.00,
7 plus prejudgment interest at the maximum rate provided by law.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, PLAINTIFFS pray for relief as follows:

- 10 1. For general and special damages according to proof at the time of trial;
11 2. For attorney's fees, costs, and expenses;
12 3. For prejudgment interest at the maximum legal rate; and
13 4. For such other and further relief as the Court may deem just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial by jury.

16 Dated: May 2, 2011

TEEPLE HALL, LLP

/S/ Gregory M. Garrison

By:

Gregory M. Garrison, Attorneys
for plaintiffs SAM KHOLI
ENTERPRISES, INC. and
PAYROLLING.COM CORP.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SAM KHOLI ENTERPRISES, INC., a California corporation;
PAYROLLING.COM CORP., a California corporation

(b) County of Residence of First Listed Plaintiff **San Diego**

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

COMSYS SERVICES, LLC, a Delaware corporation;
INNOVATIVE LOGISTICS SUPPORT SERVICES CORP., a
Louisiana corporation; and DOES 1-10,
 County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number) **TEEPLE HALL, LLP**
Gregory M. Garrison, Esq. SBN 165215 Tel. (858) 622-7878
9255 Towne Centre Drive, Suite 500, San Diego, CA 92121

'11CV0970 W NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|--|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Overpayment Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HHA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Breach of Contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 4, 2011

/s/ Gregory M. Garrison

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FPP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT “C”

Filed
10 December 14 P4:53
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-10-004361

CAUSE NO.: _____

SAM KHOLI, an individual

Plaintiff,

vs.

STEVEN GREGORY WHITE, an individual; JEFFREY A. ARMSTRONG, an individual; NAMAN, HOWELL, SMITH & LEE, PLLC, a domestic limited liability company

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Plaintiff SAM KHOLI files this Original Petition and complains of and against defendants STEVEN GREGORY WHITE, an individual; JEFFREY A. ARMSTRONG, an individual; and NAMAN, HOWELL, SMITH & LEE, PLLC, a domestic limited liability company, and for causes of action would respectfully show to this Honorable Court and jury as follows:

A. DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190 and 190.3, Plaintiff intends to conduct discovery under Level 2. Plaintiff reserves the right to request a discovery control plan from the Court under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

B. PARTIES

1. Plaintiff SAM KHOLI ("MR KHOLF") is, and at all times relevant was an individual residing in the City of San Diego, County of San Diego, and State of California and may be contacted at 4626 Albuquerque Street, San Diego, California 92109.

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2. Defendant STEVEN GREGORY WHITE ("WHITE") is, and at all times relevant was, an individual residing in the City of Waco, County of McLennan, and State of Texas, who may be served with process at his place of employment, 8310 North Capital of Texas Highway, Austin, Travis County, Texas 78731, or wherever he may be found. At all relevant times, WHITE was an attorney licensed to practice in the State of Texas, State Bar No.: 21329050, with his principal place of business in Austin, Texas.

3. Defendant JEFFREY A. ARMSTRONG ("ARMSTRONG") is, and at all times relevant was, an individual residing in the City of Waco, County of McLennan, and State of Texas, who may be served with process at his place of employment, 900 Washington Avenue, 7th Floor, Waco, County of McLennan, Texas, or wherever he may be found. At all relevant times, ARMSTRONG was an attorney licensed to practice in the State of Texas, State Bar No.: 24038747, with his principal place of business in Waco, Texas.

4. Defendant NAMAN, HOWELL, SMITH, & LEE, PLLC ("NAMAN") is a domestic limited liability company in existence in the State of Texas consisting of lawyers and other professionals with its principal place of business located at 8310 North Capital of Texas Highway, Austin, Texas 78731 in the County of Travis, State of Texas. NAMAN may be served with process by serving its agent, Roy L. Barrett, 400 Austin Avenue, Suite 800, Waco, Texas 76701.

C. VENUE AND JURISDICTION

5. The District Courts of Travis County, Texas have jurisdiction over this action because the facts giving rise to this action occurred in part within Travis County, Texas and the damages sought by Plaintiff are well in excess of the minimum jurisdictional limits of this Court.

6. Venue is proper in Travis County, Texas pursuant to Texas Civil Practice and Remedies Code section 15.001 because that is where part of the cause of action accrued.

D. GENERAL ALLEGATIONS OF FACT

7. In 2008, MR. KHOLI retained NAMAN, HOWELL, SMITH, & LEE, PLLC as his attorneys to represent him in an individual capacity as well as Sam Kholi Enterprises, Inc. in pursuing litigation against both Tom Thompson dba Thompson Trucking and Jones Motor Group, Inc. To this end, on April 18, 2008, DEFENDANTS filed a complaint on MR. KHOLI's behalf in the United States District Court for the Western District, Waco Division, Case No.: W08CA105 entitled *Sam Kholi Enterprises, Inc. v. Tom R. Thompson dba Thompson Trucking*.

8. Although MR. KHOLI expressly instructed DEFENDANTS to file suit against both Jones Motor Group, Inc. and Mr. Thompson, DEFENDANTS failed to do so. Specifically, "Plaintiff's Original Complaint" was filed solely against Mr. Thompson and the lone claim asserted was for fraud in the inducement.

The Underlying Action

9. In 2007, MR. KHOLI contacted Mr. Thompson after seeing an advertisement seeking truck driver owner/operators. When MR. KHOLI contacted Thompson Trucking, the woman who answered the telephone stated "Jones Motor Group". This initially confused MR. KHOLI as he thought he was calling Thompson Trucking. However, the woman who answered told him he had the right telephone number.

10. After multiple telephone conversations with Mr. Thompson, in the fall of 2007 MR. KHOLI traveled to Coryell County, Texas with the hope of purchasing Thompson Trucking, which Mr. Thompson had informed him had a well established customer base that MR. KHOLI could service with its existing inventory of tractors and trailers as well as any tractors and trailers purchased from the sale of the company.

11. When MR. KHOLI met with Mr. Thompson, Mr. Thompson represented to MR. KHOLI that he had an extensive customer list that would stay loyal and could be transferred as a legitimate asset to any buyer who purchased Thompson Trucking. Mr. Thompson further represented to MR. KHOLI that his key employees were bound

by non-competition agreements and would remain with the company in order to continue to serve and maintain the relationships with the customers that Mr. Thompson had under ongoing contractual agreements.

12. Based upon the above representations, among others, on October 12, 2007, MR. KHOLI and Mr. Thompson entered into a memorandum of understanding entitled "Agreement for the Purchase and Sale of Business" wherein Mr. Thompson agreed to sell MR. KHOLI his business that included real estate valued at \$150,000.00, trailers valued at \$400,000.00, other equipment valued at \$50,000.00, and goodwill valued at \$3,030,000.00 (the "Agreement"). Mr. Thompson's valuation of the business' goodwill was based upon his long-term and ongoing customer and client relationships and key employees who maintained those relationships.

13. Pursuant to the Agreement, on or about October 12, 2007, MR. KHOLI paid Mr. Thompson an initial deposit of \$646,666.66 and began making monthly installment payments of \$16,666.00 per month towards the remaining outstanding balance of \$2,983,333.34 as agreed. In turn, Mr. Thompson was obligated to transfer title to his real property located at 206 South 8th Street, Copperas Cove, Texas 76522 and title to 43 trailers as well as furniture, equipment, and other tangible assets to MR. KHOLI. Mr. Thompson never transferred title to his real property to MR. KHOLI, never transferred clean title to the 43 trailers to MR. KHOLI, and ultimately blocked MR. KHOLI's access to the furniture, equipment, and other tangible assets. In fact, MR. KHOLI later learned that Mr. Thompson did not even own and/or hold title to the 43 trailers when he entered into the Agreement.

14. In the weeks and months that followed, the terms of the sale were mutually changed several times; however, Mr. Thompson's customer list and relationships as well as his key employees who maintained those relationships remained the primary financial component of the sale.

15. Then, in January of 2008, MR. KHOLI suspected that Mr. Thompson did not, in fact, have a well established customer base as represented. Instead, Mr. KHOLI

began to believe that Thompson Trucking's business mostly relied upon third party brokers, and its most important client, known as Harbor Freight, was actually controlled by Jones Motor Group, Inc.

16. When MR. KHOLI voiced his concerns to Mr. Thompson, Mr. Thompson assured MR. KHOLI that his top producing account – Harbor Freight – was his actual customer and would stay with the business after the sale. Based upon this assurance, MR. KHOLI paid another \$600,000.00 on January 31, 2008 towards the outstanding balance owed on the purchase price.

17. Despite Mr. Thompson's representations that his key employees were bound by non-compete agreements, in about March of 2008 they left the company and began to work for Jones Motor Group, Inc. Even after this occurred, at no time did Mr. Thompson ever produce the alleged non-compete agreements to MR. KHOLI. Moreover, in March of 2008, MR. KHOLI finally confirmed that Harbor Freight was controlled by Jones Motor Group, Inc., not Mr. Thompson as he had represented.

18. When Mr. Thompson's employees left to work for Jones Motor Group, Inc., they destroyed or removed business records vital to MR. KHOLI's business interests and abandoned rolling truck deliveries operating at the time of departure. MR. KHOLI was unable to recover all of the trailers then operating, and has unpaid invoices pursuant to those loads that were delivered as promised by MR. KHOLI. Furthermore, Mr. Thompson locked MR. KHOLI out of the computer systems regarding the rolling stock as well as employee records, to the detriment of MR. KHOLI's normal business operations.

19. As a result, MR. KHOLI paid \$1,313,333.33 for Thompson Trucking and was left with nothing – no title to real property, no clean title to the trailers, no equipment, furniture, or other tangible assets, no key employees, and no well-established customer base.

20. Despite this, on May 23, 2008, Mr. Thompson filed a counter-claim against MR. KHOLI both as an individual and as Sam Kholi Enterprises, Inc. in which

he alleged breach of contract. Ultimately, as a result of the professional negligence and malpractice of DEFENDANTS, on June 9, 2009 Mr. Thompson obtained a judgment against MR. KHOLI and Sam Kholi Enterprises, Inc. in the amount of \$2,316,670.00 plus post-judgment interest at the rate of 0.48%. Mr. Thompson was further awarded pre-judgment interest in the amount of \$132,189.00 and attorneys' fees and costs in the amount of \$30,569.08 and \$6,475.00.

DEFENDANTS' Malpractice

21. But for the professional negligence and malpractice of DEFENDANTS, MR. KHOLI would have prevailed in the Underlying Action. Unfortunately, DEFENDANTS' negligence was far-reaching and included, but is not limited to: (1) Failing to file suit against Jones Motor Group, Inc.; (2) Failing to allege or introduce any evidence whatsoever – whether expert or otherwise – that the alleged personal guaranty signed by MR. KHOLI was a forgery; (3) Failing to file suit for transfer of title to the real property or for clean title to the 43 trailers and/or for rescission/restitution; and (4) Failing to introduce evidence and explain to the jury that Mr. Thompson was under an exclusive employment agreement and legally bound by a non-compete agreement to another company when he likewise agreed to be employed and legally bound by a non-compete agreement with Sam Kholi Enterprises, Inc.

Failure to Introduce Any Evidence as to Forgery

22. In the Underlying Action, MR. KHOLI's deposition was taken on September 24, 2008. At that time, MR. KHOLI was shown two separate documents which Mr. Thompson's counsel purported to be the Agreement at issue. Both of these Agreements included a personal guaranty allegedly signed by MR. KHOLI. Specifically, Mr. Thompson's counsel questioned MR. KHOLI as follows:

Q: I'll ask you the same for -- The next paragraph is entitled Guaranty, and below that paragraph there's a signature block for Sam Kholi, Guarantor. Is that your signature?

A: I don't think so.

Q: What makes you think it's not your signature?

A: Because this is a memorandum of understanding.

Q: Because it's a memorandum of understanding, it makes you think that somebody else signed your name there?

A: It's very possible.

Q: Well, Mr. Kholi, my question is: Do you remember signing that - - your name right above the typed words Sam Kholi, Guarantor?

A: And I answered and said I don't remember.

~~Q: ... You don't remember if you signed it or not?~~

A: I don't think I signed it, no.

23. After being presented with the Agreement with a personal guaranty included at his deposition, MR. KHOLI explained to DEFENDANTS that he did not sign a personal guaranty with the Agreement. As a result, MR. KHOLI instructed DEFENDANTS to hire a handwriting analyst as an expert witness to testify as to whether MR. KHOLI's signature on the personal guaranty was a forgery.

24. Despite this, two months later, DEFENDANTS filed a motion for summary judgment on MR. KHOLI's behalf in which they submitted - without MR. KHOLI's knowledge or consent -- the very Agreement MR. KHOLI testified that he did not sign *with the personal guaranty* attached to the Court as the Agreement entered into by the parties.

25. Moreover, DEFENDANTS failed and refused to designate an expert witness to testify with regard to whether the signature on the personal guaranty was a forgery. Instead, at trial DEFENDANTS failed to introduce any evidence, or even raise a question, as to whether MR. KHOLI personally guaranteed the Agreement or not.

26. As a direct result of DEFENDANTS' professional negligence and malpractice as it relates to MR. KHOLI's purported personal guaranty, a judgment was entered against MR. KHOLI as an individual in the Underlying Action.

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Failure to Sue for Transfer of Title

27. A material term of the Agreement between Mr. Thompson and MR. KHOLI required Mr. Thompson to transfer title to both real property and 43 trailers to MR. KHOLI on October 12, 2007. A review of the public record establishes that Mr. Thompson never transferred title to his real property to MR. KHOLI as required under the terms of the Agreement. Moreover, although Mr. Thompson transferred title to the 43 trailers to MR. KHOLI, said transfer was not done in conformity with the requirements of the law. As a result, Mr. Thompson never transferred clean title to the 43 trailers to MR. KHOLI. In fact, on October 12, 2007, Mr. Thompson did not own or have title to any of the 43 trailers as he represented to MR. KHOLI.

28. Pursuant to the terms of the Agreement, Mr. Thompson was required to transfer title to both the real property and the 43 trailers on October 12, 2007 when MR. KHOLI signed the Agreement and made his first lump sum payment of \$646,666.66. Mr. Thompson failed to do so. Despite this, DEFENDANTS failed to file suit for the transfer of clean title from Mr. Thompson to MR. KHOLI of both the real property and the 43 trailers and/or for rescission/restitution of the monies paid by MR. KHOLI to Mr. Thompson.

29. In addition, DEFENDANTS failed to adequately explain Mr. Thompson's material breach of the contract on October 12, 2007 to the jury. If DEFENDANTS had not acted negligently in their representation of MR. KHOLI, evidence would have been presented to the jury in an understandable manner to explain that Mr. Thompson breached the Agreement on October 12, 2007 while MR. KHOLI did not stop payment until five months later in March 2008. DEFENDANTS failed to do so. As a result, judgment was entered against both MR. KHOLI and Sam Kholi Enterprises, Inc.

Failure to Adequately Explain the Consulting and Non-Compete Agreement

30. Although not disclosed to MR. KHOLI until discovery in the Underlying Action, on September 23, 2002, Mr. Thompson entered into a Consulting and Non-Compete Agreement with Jones Express, Inc., a company of Jones Motor Group, Inc.

According to the express terms of this Consulting Agreement, it continued year to year until terminated. Thus, at the time MR. KHOLI purchased Thompson Trucking from Mr. Thompson, he was exclusively and legally bound to Jones Express, Inc. ("JEX") by the terms of the Consulting Agreement.

31. Specifically, Thompson agreed to devote his "full working time and attention to the service of JEX and to the affairs of JEX." Moreover, pursuant to the terms of the Consulting Agreement, "Thompson shall not, without the written consent of JEX, directly or indirectly render services to or for a person, association, or other business that competes with the interests of JEX."

32. In addition, the Consulting Agreement included a covenant not to compete. In this regard, "Thompson agrees that during the term of this Agreement Thompson shall not consult with or perform any freight transportation and/or consulting services for any competing company, group or facility."

33. A material term of the Agreement MR. KHOLI reached with Mr. Thompson required Mr. Thompson to remain employed by MR. KHOLI for the term of one year after MR. KHOLI purchased Thompson Trucking and further required Mr. Thompson to sign a non-compete agreement with Sam Kholi Enterprises, Inc.

34. Based on this evidence, which was available to DEFENDANTS in the Underlying Action, Mr. Thompson intentionally concealed a material fact from MR. KHOLI in the negotiation of the Agreement. Namely, Mr. Thompson was already exclusively and legally bound to the employ of JEX and had a covenant not to compete with it. As a result, Mr. Thompson could not fulfill a material term of his obligations to MR. KHOLI – Mr. Thompson could not legally work for Sam Kholi Enterprises, Inc. and he could not sign a non-compete agreement.

35. Thus, MR. KHOLI could not have first materially breached the Agreement with Mr. Thompson by failing to pay his installment payment in March of 2008 since Mr. Thompson could not legally perform his obligations under the terms of the Agreement from the time it was entered into on October 12, 2007.

Failure to Sue Jones Motor Group, Inc.

36. When MR. KHOLI initially retained DEFENDANTS, he instructed them not only to file suit against Mr. Thompson, but against Jones Motor Group, Inc. as well. Why? MR. KHOLI met with representatives from Jones Motor Group, Inc. before he entered into the Agreement with Mr. Thompson. At no time, however, did any representative of Jones Motor Group, Inc. inform MR. KHOLI of the Consulting Agreement it had with Mr. Thompson.

37. Instead, pursuant to numerous e-mails between Mr. Thompson and Jones Motor Group, Inc. which were revealed during discovery in the Underlying Action, Jones Motor Group, Inc. encouraged Mr. Thompson to enter into the Agreement with MR. KHOLI because a material term of that Agreement required all of Mr. Thompson's debts owed to Jones Motor Group, Inc. to be paid off. Thereafter, the evidence established that Jones Motor Group, Inc. intended to take over the trucking business which Sam Kholi Enterprises, Inc. purchased from Mr. Thompson.

38. To evidence this, in the beginning of March, 2008, representatives of Jones Motor Group, Inc. met with key employees of Sam Kholi Enterprises, Inc. At that time, MR. KHOLI's employees were shown a contract between Sam Kholi Enterprises, Inc.'s client – Harbor Freight – and the Jones Motor Group, Inc. That contract indicated that despite Mr. Thompson's representations otherwise, Mr. Thompson's "loyal client" Harbor Freight was leaving Sam Kholi Enterprises, Inc. for Jones Motor Group, Inc. A few days later, Sam Kholi Enterprises, Inc.'s key employees also left to work for Jones Motor Group, Inc.

39. At that time, Mr. Thompson prepared a document which was intended to explain: "Above is a normal weekly invoice to a primary customer of Thompson Trucking produced by Jones Express based upon the computer input provided by the Thompson Trucking office in Copperas Cove, TX. The information below has been added by Tom Thompson to aid in the understanding of the financial impact of the

Jones Motor Group premeditated actions to steal a business owned by another." [Emphasis added].

40. Despite all of this evidence, DEFENDANTS failed and refused to file suit against Jones Motor Group, Inc. as part of the litigation against Mr. Thompson. As a result, MR. KHOLI has lost his strategic ability to sue both Mr. Thompson and Jones Motor Group, Inc. in a single lawsuit. Instead, MR. KHOLI must now try to pursue Jones Motor Group, Inc. for whatever claims remain more than three years after the fact in a separate lawsuit while accruing additional legal fees.

41. As a result of DEFENDANTS' professional negligence and malpractice, MR. KHOLI has a judgment in the amount of \$2,316,670.00 against him as an individual, plus post-judgment interest at the rate of .48% per annum, plus pre-judgment interest in the amount of \$132,189.00 as well as attorneys' fees and costs totaling \$30,569.08 and \$6,475.00. In addition, MR. KHOLI and Sam Kholi Enterprises, Inc. paid \$1,313,333.33 for Thompson Trucking and received nothing in exchange. Thus, DEFENDANTS' professional negligence and malpractice have caused MR. KHOLI to suffer damages in excess of \$3,700,000.00, the exact amount to be proven at the time of trial. The total damages MR. KHOLI suffered as a result of DEFENDANTS' actions exceed the jurisdictional minimum of this Court.

E. CAUSES OF ACTION

COUNT I - LEGAL MALPRACTICE

42. PLAINTIFF repeats and realleges against all DEFENDANTS the allegations contained in paragraphs 1 through 42 of this Complaint as if fully set forth herein.

43. By taking the actions indicated above, DEFENDANTS had a duty to exercise the skill, prudence, and diligence exercised by other attorneys similarly situated in the community in the area of civil litigation.

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44. By taking the actions and inactions indicated above DEFENDANTS breached the aforementioned duty by, among other things: (1) Failing to file suit against Jones Motor Group, Inc.; (2) Failing to allege or introduce any evidence whatsoever – whether expert or otherwise – that the alleged personal guaranty signed by MR. KHOLI was a forgery; (3) Failing to file suit for transfer of title to the real property or for clean title to the 43 trailers and/or for rescission/restitution; and (4) Failing to introduce evidence and explain to the jury that Mr. Thompson was under an exclusive employment agreement and legally bound by a non-compete agreement to another company when he likewise agreed to be employed and bound by a non-compete agreement with Sam Kholi Enterprises, Inc.

COUNT II - PROFESSIONAL NEGLIGENCE

45. MR. KHOLI repeats and realleges against all DEFENDANTS the allegations contained in paragraphs 1 through 42 of this Complaint as if fully set forth herein.

46. By taking the actions indicated above, DEFENDANTS had a duty to exercise the skill, prudence, and diligence exercised by attorneys similarly situated in the area of civil litigation.

47. By taking the actions and inactions indicated above, DEFENDANTS breached the aforementioned duty by, among other things: (1) Failing to file suit against Jones Motor Group, Inc.; (2) Failing to allege or introduce any evidence whatsoever – whether expert or otherwise – that the alleged personal guaranty signed by MR. KHOLI was a forgery; (3) Failing to file suit for transfer of title to the real property or for clean title to the 43 trailers and/or for rescission/restitution; and (4) Failing to introduce evidence and explain to the jury that Mr. Thompson was under an exclusive employment agreement and was legally bound by a non-compete agreement to another company when he likewise agreed to be employed and bound by a non-compete agreement with Sam Kholi Enterprises, Inc.

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COUNT III - DAMAGES

48. MR. KHOLI repeats and realleges against all DEFENDANTS the allegations contained in paragraphs 1 through 42 of this Complaint as if fully set forth herein.

49. As a direct and proximate result of DEFENDANTS' breach of their professional duties as outlined above, MR. KHOLI has suffered losses and damages in a sum within the jurisdictional limits of the Court, for which he sues in this Petition. Specifically, MR. KHOLI has suffered losses and damages as a result of DEENDANTS' breach of their professional duties in excess of \$3,700,000.00, the exact amount to be proven at the time of trial. As set forth herein, MR. KHOLI has suffered additional damages and seeks recovery for same from DEFENDANTS, jointly and severally.

50. MR. KHOLI further requests recovery of pre-judgment interest and post-judgment interest at the statutory rate or at such other rate as is set by this Court.

F. JURY DEMAND

51. MR. KHOLI hereby respectfully requests a trial by jury of all issues of fact in this case.

PRAYER

52. As a result of the facts stated herein and alleged above, MR. KHOLI has been made to suffer and sustain, at the hands of the DEFENDANTS, damages in an amount far in excess of the minimum jurisdictional requirements of this Court and in such amount as the evidence may show proper at the time of trial. Upon a trial of the merits of the above action, based upon the common law and statutory remedies set forth in this Petition and other to be proved at the time of trial, MR. KHOLI shows he is entitled to compensation for the injuries suffered at the hands of the DEFENDNATS.

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WHEREFORE, PREMISES CONSIDERED, MR. KHOLI prays that DEEFNDANTS be cited and appear herein, and that upon final trial or other disposition of this lawsuit, MR. KHOLI have and recover judgment against DEFENDANTS jointly and severally for the following:

- a) all damages proven at the time of trial;
- b) pre-judgment and post-judgment interest as provided by law;
- c) costs of court; and
- d) such other and further relief, at law or in equity, to which MR. KHOLI is justly entitled.

Respectfully submitted,

Dated: December 8, 2010

SAM KHOLI

By: 

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